

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1342 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

NARESHKUMAR PRITAMDAS SADHVANI

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR SAMIR DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 07/10/1999

ORAL JUDGEMENT

1. Heard Learned Advocate Mr. H.R. Prajapati for the

petitioner and learned A.G.P. Mr. Samir Dave for the respondent Nos. 1 to 3.

2. The detention order dtd.. 15/12/98 passed by the respondent NO. 2 - Commissioner of Police, Ahmedabad, in exercise of powers conferred under Sec. 3 (1) of Gujarat Prevention of Antisocial Activities Act, 1985 (PASA for short), is challenged in the present petition under Article 226 of the Constitution of India.

3. The petitioner detenu has produced grounds of detention at Annexure - B, which indicate that two prohibition cases bearing C.R. No. 263/98 and C.R. NO. 264/98 were registered against the petitioner at Nashabandhi Police Station, South Division, Ahmedabad on 12/12/98, in respect to the offences made punishable under Sec. 66 (b), 65 (e) and 81 of Bombay Prohibition Act. That in the first case 197.5 Liters countrymade liquor was seized while in the second case 206 Liter countrymade liquor was seized. Both the matters are pending for investigation. Apart from the material of above stated two cases, statement of two witnesses were recorded one of which is dtd. 29/11/98, when the witness was standing near Jashodanagar Cross Road, the petitioner with his accomplice came there and pick quarrel with the witness on the allegation that the witness is a Police informant and supplying information about the petitioner. The witness was beaten by the petitioner and his accomplice and as alarm was raised by the witness passers-by gathered there and attempted to save the witness. It is alleged by the witness that at that time, the petitioner took out knife and rushed to the people, whereby the atmosphere of terror was prevailed and people dispersed.

4. The other witness has stated that on 1/12/98 when he was passing through the area of Isanpura around 9-00 a.m. with his vehicle, the petitioner alongwith his accomplice stopped him and asked the witness to carry the countrymade liquor illegally in his vehicle. On refusal of the witness, the petitioner abused the witness and started beating the witness. On alarm by the witness, passers-by gathered and attempted to save the witness but the petitioner took out razor and rushed towards the people gathered there and as a result the people dispersed.

5. On the basis of abovestated material i.e. the evidence collected by the investigation in two criminal cases and the statement of two anonymous witnesses, the detaining authority has come to the conclusion that the

petitioner is a "bootlegger" within the meaning of Sec. 2 (b) of PASA. It is alleged in the grounds of detention that the petitioner has been bringing countrymade liquor from the nearby area like Mahemdabad through vehicles and has been storing in Kagadapith area. That the petitioner has been illegally selling the liquor in Kagadapith area to different bootlegger. The petitioner being a head-strong person, people in the neighbourhood are afraid of him and nobody is willing to give evidence against him. That the anonymous witnesses have expressed fear in respect to likelihood of harm being caused by the petitioner and as such privilege under Sec. 9 (2) of PASA is required to be claimed for the said two witnesses. The detaining authority has recorded that resort to enforcement of general provisions would be insufficient to prevent the petitioner from continuing his nefarious bootlegging activity and as such the impugned order is passed.

6. The petitioner has challenged the impugned order on numerous grounds. Learned Advocate Mr. H.R. Prajapati has contended that the material supplied to the petitioner alongwith the grounds of detention, does not disclose any fact regarding the allegation of storing countrymade liquor in Kagadapith area by the petitioner-detenu. That the said allegation appears to have been based by the detaining authority on extraneous material which has vitiated the subjective satisfaction and as such the impugned order is bad in law. In support of the submission, Mr. Prajapati has referred to and relied on the observations made by this Court in the matter of Dashrathbhai Madhabhai Mali Vs. Commissioner of Police, Baroda City, Baroda, and ors., in Special Civil Application NO. 948/94 decided on 28/2/95. He has also referred to and relied on the observations made by the Division Bench in Letters Patent Appeal No. 1163/99 decided on 20/9/99.

7. Mr. Samir Dave learned AGP appearing for the respondents, relied on affidavit of Additional Director General of Police, dtd. 9th July, 1999, and urged that the petitioner was apprehended with countrymade liquor and as such Criminal Cases have been filed. The said facts suggest that the petitioner was in possession of countrymade liquor. Mr. Dave has also submitted that the statement of witnesses recorded in the registered case against the petitioner disclose the fact that the countrymade liquor seized by the police, in the cases where supplied by the petitioner and as such the facts apparent from the statement as well as F.I.R. disclose that the petitioner was possessing, selling and supplying

the countrymade liquor as bootlegger. Under the circumstances the statement made in the ground of detention that the petitioner has been storing countrymade liquor in Kagadapith area having brought the same from neighbouring area like Mahemdad through vehicle is a passing remark and cannot be said to be extraneous material

8. It is difficult to accept the submission urged on behalf of the respondents. The detaining authority is dutybound to apply his mind to the material produced before him by the sponsoring authority and has to form the subjective satisfaction on the basis of material itself. In the instant case, verification of entire material supplied to the petitioner alongwith the grounds of detention disclose that nowhere by any of statement, Panchnama or information supplied, a fact was placed before the detaining authority that the petitioner used to store countrymade liquor in Kagadapith area after bringing the same through vehicle from nearby area like Mahemdabad. That the said fact having stated in the grounds of detention also disclose the non-application of mind on the part of the detaining authority which renders the impugned order invalid.

9. Since the petition succeeds on the abovestated point alone, it is not necessary to consider the other contentions.

10. On the basis of the aforesaid discussion, the petition is allowed. The detention order dtd. 15th December, 1998, passed by the respondent NO. 2 Commissioner of Police, Ahmedabad, against the petitioner is hereby quashed and set aside. The petitioner-detenu namely Nareshkumar Pritamdas Sadhwani is ordered to be set at liberty forthwith, if not required in any other case.

Rule is made absolute accordingly.

Rafik *